



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT PROFESSIONAL PROGRAMME

**(This supplement covers Amendments/ Developments
from August, 2021 to November, 2023)**

DRAFTING, PLEADINGS AND APPEARANCES

MODULE 1

PAPER 3

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Lesson 4: Drafting and Conveyancing Relating to Various Deeds and Documents (I)

FAQs on LLP Agreement

1. How the mutual rights and duties of partners inter-se and those of partners and LLPs would be governed?

The mutual rights and duties of partners inter se and those of the LLP and its partners shall be governed by the agreement between partners or between the LLP and the partners. This Agreement would be known as “LLP Agreement”.

2. Whether LLP Agreement would be mandatory for all LLPs?

As per provisions of the LLP Act, in the absence of agreement as to any matter, the mutual rights and liabilities shall be as provided for under Schedule I to the Act. Therefore, in case any LLP proposes to exclude provisions/requirements of Schedule I to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of Schedule I.

Schedule I of the LLP Act, 2008 is provided hereunder:

The First Schedule

[See section 23(4)]

Provisions Regarding Matters Relating To Mutual Rights And Duties Of Partners And Limited Liability Partnership And Its Partners Applicable In The Absence Of Any Agreement On Such Matters

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in this Schedule.
2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.
3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him
 - (a) in the ordinary and proper conduct of the business of the limited liability partnership;
 - or
 - (b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.

4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.
5. Every partner may take part in the management of the limited liability partnership.
6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
7. No person may be introduced as a partner without the consent of all the existing partners.
8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.
10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.
11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.
12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.
13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.
14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

Lesson 11: Appearances and Art of Advocacy

1. Amendment to section 248 of the Income-tax Act, 1961

Finance Act, 2022 has amended section 248 of the Income-tax Act, 1961 by adding the below mentioned proviso:

“Provided that no appeal shall be filed where tax is paid to the credit of the Central Government on or after the 1st day of April, 2022.”.

Details of Change

Now, appeal has been prohibited if tax is paid to the credit of the Central Government on or after the 1st day of April, 2022.

2. Amendment to Section 253 of the Income-tax Act, 1961

Finance Act, 2023 has amended section 253 of the Income-tax Act, 1961. The changes are as under:

In section 253 of the Income-tax Act,—

(a) in sub-section (1),—

(A) in clause (a), after the word, figures and letter "section 271A,", the words, figures and letters "section 271AAB, section 271AAC, section 271AAD," shall be inserted;

(B) after clause (a), the following clause shall be inserted, namely:—

"(aa) an order passed by a Joint Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A, section 271AAC, section 271AAD or section 271J; or";

(C) for clause (c), the following clause shall be substituted, namely:—

"(c) an order passed by,—

(i) a Principal Commissioner or Commissioner under section 12AA or section 12AB or under clause (vi) of sub-section (5) of section 80G or under section 263 or under section

270A or under section 271 or under section 272A or an order passed by him under section 154 amending any such order; or

(ii) a Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General or a Principal Director or Director under section 263 or under section 272A or an order passed by him under section 154 amending any such order; or";

(b) in sub-section (2), for the words and brackets "Commissioner (Appeals)", the words and brackets "the Joint Commissioner (Appeals) or the Commissioner (Appeals)" shall be substituted;

(c) in sub-section (4),—

(i) for the words and brackets "against the order of the Commissioner (Appeals)", the words "against an order" shall be substituted;

(ii) for the words and brackets "any part of the order of the Commissioner (Appeals)", the words "any part of such order" shall be substituted.

Details of Change

This amendment *inter alia* increased the Scope of appeal in section 253(1). Joint Commissioner (Appeals) has also been added to section 253(2) along with Commissioner (Appeals) for the purpose of directing the Assessing Officer to appeal to the Appellate Tribunal against the order.

Note: Students appearing in June, 2024 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 30th November, 2023.